

Andrew M. Jacobs (#021146)  
Amanda Z. Weaver (#034644)  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 East Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202  
Telephone: (602) 382-6000  
[ajacobs@swlaw.com](mailto:ajacobs@swlaw.com)  
[aweaver@swlaw.com](mailto:aweaver@swlaw.com)

Hon. Sara J. Agne  
Superior Court of Arizona in  
Maricopa County  
3131 West Durango Street  
Phoenix, Arizona 85009  
Telephone: (602) 506-8388

**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

PETITION FOR CONFORMING  
AMENDMENTS TO THE ARIZONA  
JUSTICE COURT RULES OF  
CIVIL PROCEDURE

Supreme Court No. R-19-  
0020

**Reply in Support of Petition  
and Amended Petition**

The above Petitioners hereby reply in support of their Petition and submit this Amended Petition, pursuant to Supreme Court Rule 28, to further the initial Petition's goal of aligning the limits on discovery in Justice Court with the limits in Tier 1 cases. Petitioners are grateful for the comments supporting the Petition from a group of Justices of the Peace and also from the State Bar. In response to the State Bar's comments, Petitioners have slightly amended the proposed rule language to add an exception to the new, lower discovery limits in the Justice Court Rules of Civil Procedure. This exception would permit additional discovery to be taken for good cause shown. With this change, the Amended Petition's proposal more closely mirrors the operation of Tier 1 cases in the Superior Court. The Amended Petition also seeks to state more clearly the time limit for depositions.

**I. Petitioners Agree With the State Bar That the Petition to Import Tier 1 Discovery Limits Into Justice Court Cases Is Improved By Adopting a Good Cause Exception for Exceeding Discovery Limits, Much Like the Procedure For Allowing Overlimit Discovery In Ariz. R. Civ. P. 26.2(g).**

The State Bar provided feedback that unlike the tiering in Ariz. R. Civ. P. 26.2, the Petition’s proposal did not include a good cause exception for exceeding discovery limits where appropriate. Petitioners agree with this observation and propose to add a good cause exception to the Petition’s proposal to reduce discovery in the Justice Court Rules. The proposed changes maintain the initially proposed limits on Justice Court discovery to accord with discovery limits in Tier 1 cases, but add a variant of the phrase “unless the party asks the court for permission to serve more [discovery] and the court gives permission because the party showed good cause for serving [additional discovery].” This or similar wording is added to subsection (b) of Rule 124 (“Interrogatories to Parties”), Rule 125 (“Request for Production of Documents, Electronically Stored Information, and Things; Request for Entry Upon Land for Inspection and Other Purposes”), and Rule 126 (“Request for Admissions”). In this, the Petition’s proposal now aligns better with Rule 26.2(g), which provides the procedure for obtaining discovery in excess of tier limits.

**II. Petitioners Amend Their Petition To More Clearly State the Distinction Between the Cumulative Limit for Deposition Discovery, Which Is Five Hours, and the Limit for Individual Depositions, Which Is Four Hours.**

The Petition intended to conform Justice Court deposition discovery to Tier 1 deposition discovery in the Superior Court. Tier 1 deposition discovery is limited to “five total hours of fact witness depositions.” Ariz. R. Civ. P. 26.2(f)(1). That five

hour total limit works with the four hour limit for any one deposition. Ariz. R. Civ. P. 30(d)(1). The Petition sought to make the Justice Court Rules congruent with the five hour limit in Rule 26(f)(1) by adding to Rule 123(b) the language “Five (5) total hours are permitted for all fact witness depositions.”

However, Petitioners concluded that the proposed text in Rule 123(b) could be made clearer and could better express the cumulative limit for deposition hours. Accordingly, this Amended Petition substitutes in the proposed text of Rule 123(b) this sentence: “A party may take no more than five (5) total hours of depositions of all fact witnesses.” That language would make more clear that the five total hours applies in aggregate, rather than applying to *each* fact witness.

**III. The Rule 28 Comment Process Is An Important Vehicle for Securing Consensus Around Rule Changes, and the Presence of Only Positive Comments From Affected Stakeholders, and the Correlative Lack of Negative Comments From Affected Stakeholders, Provides a Significant Justification For Adopting the Amended Petition.**

This Court last year updated Supreme Court Rule 28 in ways that underscore the importance of the public conversation around proposed rule changes. While this Court is not bound to follow comments, it facilitates the commenting process so it can adjudge what stakeholders think, and can decide whether stakeholders in the bar and public support, oppose, or are meaningfully equivocal about proposed changes. This in turn aids the development of procedural law, because procedural law works best when there is buy-in and consensus about changes.

For these reasons, Petitioners note that fifteen Justices of the Peace have

commented in favor of the Petition's proposals. Petitioners likewise note that the State Bar, which is the only other commenter, likewise favored the Petition, subject to the addition of the good cause requirement, with which Petitioners agree. Petitioners believe this consensus and lack of disagreement with the proposal is a further important reason to adopt the Petition.

**CONCLUSION**

Petitioners hereby propose the language attached in Appendix A to reflect the above revisions, and hereby request through this Amended Petition that the Court adopt these changes.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of May, 2019.

By: /s/ Andrew M. Jacobs  
Andrew M. Jacobs (#021146)  
Amanda Z. Weaver (#034644)  
Snell & Wilmer L.L.P.  
One Arizona Center  
400 East Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202

By: /s/ Sara J. Agne with permission  
Hon. Sara J. Agne  
Superior Court of Arizona in  
Maricopa County  
3131 West Durango Street  
Phoenix, Arizona 85009